

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WOOLMAN OVAL HOLDINGS, LLC,

2:09-CV-177 JCM (LRL)

Plaintiff,

v.

ESTATE OF MICHAEL A.
WEISMAN, et al.,

Defendants

ORDER

Presently before the court is appellant Woolman Oval Holdings, LLC's (hereinafter "Woolman") motion for judgment (doc. # 18), and motion to amend/correct judgment. (Doc. # 19). Receiver Federal Deposit Insurance Corporation (hereinafter "FDIC") filed a limited joinder to the motion for judgment (doc. # 21), and an opposition to the motion to amend/correct judgment. (Doc. # 20). Woolman then filed replies in support of both motions. (Doc. ## 22, and 23).

This case originated with a complaint filed by Michael A. Weisman in Clark County district court against Washington Mutual Home Loan (hereinafter "WaMu") claiming wrongful foreclosure and breach of contract, involving his property located at 9008 Crystal Glass Drive, Las Vegas, Nevada 89117. As the beneficiary of the deed of trust and promissory note secured by the property, and after Weisman stopped making payments, WaMu sold Weisman's property at a foreclosure sale to Woolman. When eviction proceedings began, Weisman filed the state court action against Woolman and WaMu; Woolman then filed a counterclaim against Weisman, and a cross-claim against WaMu.

1 After the state court held that the foreclosure sale was wrongful, the trial court held a
2 settlement conference, and decided that title to the property be quieted to Weisman. Woolman
3 complied with this decision. However, prior to the completion of the settlement between Weisman
4 and WaMu, Weisman died, and WaMu's priority lien position was extinguished.

5 The trial court then ordered Weisman's estate to sell the property and repay WaMu the
6 additional funds. However, the parties later discovered that an Internal Revenue Service (IRS) tax
7 lien in the amount of \$275,000 had attached to the property. Therefore, sale of the property was not
8 possible.

9 After considering Woolman's cross-claim against WaMu, the trial court held that Woolman
10 was not entitled to expectation or contract damages, but was only entitled to recover the amount paid
11 for the property, including interest, and attorney's fees and costs. The parties then appealed this
12 decision to the Nevada Supreme Court. In 2008, the Federal Deposit Insurance Corporation
13 ("FDIC") was appointed receiver for Washington Mutual Bank ("WaMu Bank"), the company into
14 which WaMu Home Loan was merged.

15 In January 2009, the FDIC filed with the Nevada Supreme Court a motion to substitute, and
16 a motion for stay pending exhaustion of the mandatory administrative claims process. The Nevada
17 Supreme Court granted the stay in accordance with the administrative process mandated by 12
18 U.S.C. §§ 1821(d)(3)-(13). Subsequently, the FDIC removed the action to this court.

19 A. Motion for Judgment

20 When a case is removed from state appellate court to this court, the Ninth Circuit has held
21 that the district court must follow the 'hybrid' approach for addressing the case. *Resolution Trust*
22 *Corp. v. Bayside Developers*, 43 F.3d 1230, 1237 (9th Cir. 1994). Having found that removal is
23 proper, the district court may "adopt the state court judgment as its own." *Id.* at 1238. After
24 adopting the state court judgment, the parties may file post-judgment motions or a timely notice of
25 appeal.

26 Here, the parties jointly request that this court adopt the state court's judgment. Therefore,
27 in accordance with the procedure's adopted by the Ninth Circuit, this court enters judgment adopting
28

1 the state court's judgment.

2 B. Motion to Amend Judgment

3 Federal Rule of Civil Procedure 59(e) allows a district court to reconsider and amend a
4 previous order. According to the Ninth Circuit, this rule provides "an extraordinary remedy" that
5 should be considered when there is newly discovered evidence, clear error, or an intervening
6 changing the law. *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003)(citing *Kona Enterprises,*
7 *Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000)).

8 Here, after requesting that this court enter judgment adopting the state court's judgment,
9 Woolman sets out arguments in favor of amending the state court judgment. In doing so, Woolman
10 is, for all practical purposes, requesting that this court serve as a court of appeals for the state district
11 court.

12 According to the Ninth Circuit, when a state action on appeal is removed to district court, the
13 district court is not required to act as an appellate court. *Resolution Trust Corp.*, 43 F.3d at 1238.
14 In these cases, the parties may file a motion to amend judgment, pursuant to Fed. R. Civ. P. 59(e),
15 to present issues not previously raised in the state litigation. *Id.*

16 This court is not persuaded that Woolman's arguments raise an issue that merits an
17 "extraordinary remedy" under Fed. R. Civ. P. 59(e). Furthermore, unless there is a federal question
18 or an issue not previously litigated in the state action, this court will not grant a motion to amend.

19 Accordingly,

20 IT IS HEREBY ORDERED ADJUDGED AND DECREED that appellant Woolman's
21 motion for judgment (doc. # 18) is GRANTED.

22 IT IS FURTHER ORDERED that appellant Woolman's motion to amend judgment (doc. #
23 19) is DENIED.

24 DATED June 8, 2010.

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26 
27 UNITED STATES DISTRICT JUDGE
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